

AG Contract No.: KR05-0401TRN
ADOT ECS File No.: JPA 05-025
Project No.: PLH-AAP-0 (013) A
Project: Concho – Snowflake Hwy
TRACS No.: SS573 01C
Budget Source Item No.: N/A

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
APACHE COUNTY

THIS AGREEMENT is entered into this date June 8, 2005, pursuant to Arizona Revised Statutes § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and APACHE COUNTY, acting by and through its CHAIRMAN and BOARD OF SUPERVISORS (the "County").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 and § 28-334 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The County is empowered by Arizona Revised Statutes § 11-251 and § 11-952 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the County.
3. Congress has authorized appropriations for, but not limited to, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.
4. The County has selected such project within the boundary of the County; the survey of the project has been completed; and the plans, estimates and specifications will be prepared and as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.
5. The County in order to obtain Federal Funds for the construction of the project, is willing to provide County funds to match Federal funds in the ratio required or as finally fixed and determined by the County, State and FHWA, including actual construction engineering (CE) and administration costs.
6. The interest of the State for this project is in the acquisition of Federal funds for the use and benefit of the County and is authorized as the designated agent. Funds expended for the project, are authorized by reason of Federal Law and regulations

NO. 27545
Filed with the Secretary of State
Date Filed: 6/08/05

Janice K. Brewer
Secretary of State

By: Mary Vanclov

7. The work encompassed in this Agreement is for the reconstruction of roadway for pavement preservation beginning where State Highway 180A and Concho Highway meet and extending west on Concho Highway for four miles. The estimated costs are as follows:

TRACS No. SS573 01C

*Total Estimated Cost	*\$899,815.00
Estimated Federal Aid Funds @ 94.3% (capped)	\$688,853.00
Estimated County Funds @ 5.7%	\$ 41,638.00
Estimated County Funds @ 100%	<u>\$169,324.00</u>
Total Estimated County Funds	\$210,962.00

*(Includes construction, construction engineering administration, and incidentals)

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall:

a. Submit a program to the Federal Highway Administration (FHWA) containing the above-mentioned Project with the recommendation that it be approved for construction.

b. Upon approval by FHWA, receipt of the County's matching funds; and with the aid and consent of the County and the FHWA, the State will proceed to advertise for, receive and open bids subject to the concurrence of FHWA and the County, enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project. Such Project's to be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions, an Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation (ADOT).

c. On behalf of the County, the State will enter into a Project Agreement with FHWA covering the work embraced in said construction contract and request the maximum authorized Federal funds available, including construction engineering and administration costs. Should costs exceed the maximum Federal funds available, it is understood and agreed that the County will be responsible for any overage.

d. Not be obligated to maintain said Project, should the County fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. The County shall:

a. Be obligated to incur any expenditure should unforeseen conditions or circumstance increase the cost of said work required by a change in the extent of Scope of Work requested by the County. Such changes require the prior approval of the State.

b. Agree the cost of the analysis and works covered in this Agreement is to be borne by FHWA and the County, each in the proportion prescribed and determined by FHWA.

c. Prior to solicitation of bids, agree to deposit funds with the State in an amount equal to the difference between the total cost of the work provided for in this Agreement and the amount of Federal Aid (capped) received.

d. Acquire the necessary rights-of way and hereby certifies that all necessary rights-of-way have been or will be acquired prior to advertisement for bid.

e. Remove from the proposed rights-of-way all obstructions, non-construction related or unauthorized encroachments of whatever nature, either above or below the surface of the roadway within the County's right-of-way and hereby certifies that all obstructions and unauthorized encroachments have been or will be removed therefrom, prior to the start of construction.

f. Not permit or allow any encroachments, except those authorized by permit, franchise or license upon or private use of the right-of-way. In the event of any unauthorized encroachment or improper use, the County shall take all necessary steps to remove or prevent any such encroachment or use.

g. Upon completion of construction, be responsible to provide for, at its own costs and as an annual item in its budget, proper maintenance to the work described in this Agreement.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement, nor for any resulting construction project. The County assumes full responsibility for the design, plans, specifications, reports and the engineering in connection therewith, and the construction of the improvements contemplated, cost over-runs and construction claims. The County shall require its contractor(s) to name the State as an additional insured in the contractor(s) insurance policies. The County shall also require its contractors to name the State as an additional indemnitee in the County's contracts with its contractor(s). It is understood and agreed that State's participation is confined solely to securing Federal aid; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof shall be solely the liability of the County and that, to the extent permitted by law, the County hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees of the County, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or attorneys' fees.

2. The cost of the construction and construction engineering work covered by this Agreement is to be borne by FHWA and the County, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, the County agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of federal aid received.

3. The terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said project and related deposits or reimbursement. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon thirty-days (30) written notice to the other party. It is understood and agreed that, in the event this Agreement is terminated by the County, the State shall in no way be obligated to maintain said project.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds. Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue Mail Drop 616E
Phoenix, AZ 85007
FAX: (602) 712 7424

Apache County
Attn: Ferrin Crosby
P.O. Box 428
St. Johns, AZ 85936
(928) 337-7528

11. Pursuant to Arizona Revised Statutes § 11-952, (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

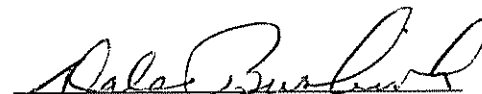
IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

APACHE COUNTY


STATE OF ARIZONA

Department of Transportation

By 
JIM CLAW
Chairperson

By 
DALE BUSKIRK
Division Director

ATTEST

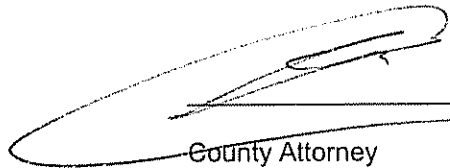
By 
DELWIN P. WENGERT
County Clerk

JPA 05-025

APPROVAL OF APACHE COUNTY

I have reviewed the above referenced intergovernmental Agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and APACHE COUNTY, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the COUNTY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 17th day of May, 2005.



County Attorney

JIM CLAW
CHAIRMAN OF THE BOARD
DISTRICT I
P.O. BOX 1952 CHINLE, AZ 86503

TOM M. WHITE, JR.
VICE CHAIR. OF THE BOARD
DISTRICT II
P.O. BOX 994 CANADO, AZ 86505

DAVID A. BROWN
MEMBER OF THE BOARD
DISTRICT III
P.O. BOX 428 ST. JOHNS, AZ 85936

**BOARD OF SUPERVISORS
OF APACHE COUNTY**

P.O. BOX 428
ST. JOHNS, ARIZONA 85936

TELEPHONE: (928) 337-4364
FACSIMILE: (928) 337-2003



DELWIN F. WENGERT, MANAGER-CLERK
ST. JOHNS, AZ 85936

CERTIFICATION OF MINUTES

Ferrin Crosby, County Engineer, requested authorization to enter into an Intergovernmental Agreement between the State of Arizona acting by and through the Department of Transportation and Apache County regarding reconstruction of four miles of County Road 5020, Project No. PLH-AAP-0(013)A. Mr. Crosby stated that Deputy County Attorney Buzz France reviewed the agreement and had expressed his concern with the boilerplate terminology that the Attorney General's office uses. Mr. Crosby provided an explanation of the content of the agreement and the area of concern Mr. France had. Mr. Crosby stated that he does not believe the Attorney General's office will make any changes to the language in the agreement and recommended approval. Mr. Brown moved approval. Mr. White asked about this type of funding for the northern part of the county. A discussion was held regarding these types of projects and the funding that was used. Mr. Crosby stated that the remaining funds needed for this project will be funded by District III. Mr. Brown provided an overview on how he had obtained funding for this program which included the request for two projects off the reservation and three on the reservation and how he had informational packets prepared and personally hand delivered the packets to congressman in Washington. Mr. Brown also provided an update on the status of those five projects. Mr. White seconded the motion. Vote was unanimous.

I, Delwin Wengert, Clerk of the Board of Supervisors, do hereby certify that the above is a true and correct copy of the minutes of a meeting of the Apache County Board of Supervisors held n May 17, 2005.

IN WITNESS WHEREOF, I have affixed the official seal of Apache County at St. Johns, the county seat this 19th day of May, 2005.

A handwritten signature in cursive script that reads "Delwin Wengert".

Delwin Wengert
Clerk/Manager



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

TERRY GODDARD
ATTORNEY GENERAL

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR05-0401TRN (**JPA 05-025**), an Agreement between public agencies, i.e., *The State of Arizona* and *Apache County*, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: June 1, 2005

TERRY GODDARD
Attorney General

A handwritten signature in cursive script, reading "Susan Davis", written over a horizontal line.

Susan E. Davis
Assistant Attorney General
Transportation Section

SED:mjf
Attachment
907735